

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 05, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANDREA GONZALEZ,

Plaintiff,

v.

DEREK THOMPSON, DMD License
#DE00009229, THOMPSON DMD,
FERGUSON DDS, PPLC, DBA Affordable
Oral Surgery, Primary business name
Affordable Dental Care, NPI #1104980283, a
Washington Corporation, Washington State
UBI #603-122-377, DAVID ROBERTS, DDS,
License#DE60870688, an associate dentist
employed by Thompson Ferguson, PLLC., a
Washington Corporation, STEPHANIE LEE,
License #DE60972402, an associate dentist
employed by Thompson Ferguson, PLLC., a
Washington Corporation, OTHELLO
FAMILY DENTAL CENTER (140 East
Main – Othello, WA 99344, Washington,
NPI# 1891913042, JI CHOI – A dentist
formerly employed by Aleta Cheek, DDS,

No. 4:23-CV-05030-SAB

**ORDER SUBSTITUTING
PARTIES FOR UNITED
STATES; GRANTING
MOTION TO DISMISS
UNITED STATES;
REMANDING ACTION**

**ORDER SUBSTITUTING PARTIES FOR UNITED STATES; GRANTING
MOTION TO DISMISS UNITED STATES; REMANDING ACTION ~ 1**

License #DE00008338, an associate dentist
 employed by OTHELLO FAMILY DENTAL
 CENTER, DONALD SCHRACK, DDS,
 License #DE60752170, an associate dentist
 employed by Yakima Family Dental NPI
 #170618925; LBN – DEREK THOMPSON
 DMD, PATRICK FERGUSON DDS PLLC,
 COLUMBIA BASIN HEALTH
 ASSOCIATION, a Washington Non-Profit
 Corporation, UBI #600 141 835, NPI
 #1417116385.

Defendants.

Before the Court are Plaintiff's Motion to Dismiss Claim Against Defendant
 HHS, ECF No. 4; Plaintiff's Motion for Remand, ECF No. 5; the United States'
 Notice of Substitution of United States for Federal Defendants Columbia Basin
 Health Association (CBHA); Dr. Ji Choi, DDS; and Dr. Aleta Cheek, DDS, under
 42 U.S.C. 233 (Federally supported health Centers Assistance Act FSHCCA) and
 28 U.S.C. § 2679, ECF Nos. 8, 13; the United States' Motion to Dismiss for Lack
 of Jurisdiction, ECF No. 9, and the United States' Motion for Summary Judgment,
 ECF No. 12. The motions were heard without oral argument.

Plaintiff is represented by Jarrod Hays; Defendants Derek Thompson,
 Thompson DMD Ferguson DDS PPLC, and David Roberts are represented by
 Steven Dixon. Defendant Donald Schrack is represented by Natalie Heineman and
 Nicole Morrow. The remaining Defendants are represented by James King and
 Timothy Durkin.

//

**ORDER SUBSTITUTING PARTIES FOR UNITED STATES; GRANTING
 MOTION TO DISMISS UNITED STATES; REMANDING ACTION ~ 2**

1 Plaintiff originally filed this action for medical malpractice in Franklin
2 County Superior Court. The United States removed the action pursuant to 42
3 U.S.C. § 233(c) because Plaintiff's Complaint involved allegations against
4 commissioned employees of a federally funded health facility who were deemed
5 by the U.S. Department of Health and Human Services to have acting within the
6 course and scope of employment with Defendant Columbia Basin health
7 Association (CBHA). ECF No. 1. On March 7, 2023, the United States filed a
8 Motion for Substitution of Parties, ECF No. 8, and subsequently filed an Amended
9 Notice of Substitution of Parties, ECF No. 13, asking the Court to substitute it for
10 Defendants CBHA, Othello Family Dental Clinic, Dr. Ji Choi, DDS, and Dr. Aleta
11 Cheek, DDS.

12 Recognizing that her claims against the federal Defendants were now time-
13 barred, Plaintiff moved to dismiss the claims against the federal Defendants from
14 her Complaint. She then moved to remand the case back to Franklin County
15 Superior Court because the basis for federal jurisdiction was eliminated by the
16 dismissal of those Defendants.

17 Here, judicial economy would be better served by permitting Plaintiff to
18 dismiss the federal Defendants and remanding this action back to Franklin County
19 Superior Court. *See Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) ("A
20 district court should grant a motion for voluntary dismissal . . . unless a defendant
21 can show that it will suffer some plain legal prejudice as a result."). The federal
22 Defendants have not shown that they will suffer any prejudice as a result. The
23 Court declines to exercise subject matter jurisdiction over the remaining state law
24 claims and Defendants.

25 Accordingly, **IT IS HEREBY ORDERED:**

26 1. The United States' Notice of Substitution, ECF Nos. 8 and 13, are
27 **GRANTED.**

28 2. The Clerk of Court is directed to **substitute** the United States for the

**ORDER SUBSTITUTING PARTIES FOR UNITED STATES; GRANTING
MOTION TO DISMISS UNITED STATES; REMANDING ACTION ~ 3**

1 following Defendants: Columbia Basin Health Association, Othello
2 Family Dental Clinic, Dr. Ji Choi, DDS, and Dr. Aleta Cheek, DDS.
3 These Defendants are **dismissed** from this action with prejudice.

4 3. Plaintiff's Motion to Dismiss Claim Against Defendant HHS, ECF
5 No. 4, is **GRANTED**. The United States is **dismissed** from this action
6 with prejudice.

7 4. Plaintiff's Motion to Remand, ECF No. 5, is **GRANTED**. The above-
8 captioned case is **REMANDED** to Franklin County Superior Court.

9 5. The United States' Motion to Dismiss for Lack of Jurisdiction, ECF
10 No. 9, is **DENIED**, as moot.

11 6. The United States' Motion for Summary Judgment, ECF No. 12, is
12 **DENIED**, as moot.

13 **IT IS SO ORDERED**. The District Court Executive is hereby directed to
14 file this Order, provide copies to counsel, and **close** the file.

15 **DATED** this 5th day of April 2023.



20 A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

21 Stanley A. Bastian
22 Chief United States District Judge
23
24
25
26
27
28